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Attorneys for Defendant PINNACLE CREDIT SERVICES, LLC, erroneously sued and served as PINNACLE CREDIT SERVICES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MICHAEL WILLIAMS,

Plaintiff,

vs.

TRANSUNION, LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.;
EQUIFAX INFORMATION SERVICES,
LLC, AMERICAN EXPRESS TRAVEL
RELATED SERVICES, INC.; DISCOVER
FINANCIAL SERVICES; PINNACLE
CREDIT SERVICES, INC.; ASSET
ACCEPTANCE, LLC; and NATIONAL
CREDIT ADJUSTERS, LLC.

Defendants.

Case No. C-07-5956 CRB

**ANSWER OF DEFENDANT PINNACLE
CREDIT SERVICES, LLC TO COMPLAINT**

Defendant, PINNACLE CREDIT SERVICES, LLC, for itself and for no other defendants, answers as follows:

JURISDICTION AND VENUE

1. Answering paragraph 1 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

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DESCRIPTION OF THE CASE

2. Answering paragraph 2 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

3. Answering paragraph 3 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

4. Answering paragraph 4 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

5. Answering paragraph 5 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

PARTIES

6. Answering paragraph 6 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

7. Answering paragraph 7 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

8. Answering paragraph 8 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

9. Answering paragraph 9 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

1 information to form a belief as to the truth of the allegation contained therein, and on that basis
2 denies each and every allegation therein.

3 19. Answering paragraph 19 of the Complaint, defendant is without knowledge or
4 information to form a belief as to the truth of the allegation contained therein, and on that basis
5 denies each and every allegation therein.

6 20. Answering paragraph 20 of the Complaint, defendant is without knowledge or
7 information to form a belief as to the truth of the allegation contained therein, and on that basis
8 denies each and every allegation therein.

9 21. Answering paragraph 21 of the Complaint, defendant is without knowledge or
10 information to form a belief as to the truth of the allegation contained therein, and on that basis
11 denies each and every allegation therein.

12 22. Answering paragraph 22 of the Complaint, defendant is without knowledge or
13 information to form a belief as to the truth of the allegation contained therein, and on that basis
14 denies each and every allegation therein.

15 23. Answering paragraph 23 of the Complaint, defendant is without knowledge or
16 information to form a belief as to the truth of the allegation contained therein, and on that basis
17 denies each and every allegation therein.

18 24. Answering paragraph 24 of the Complaint, defendant is without knowledge or
19 information to form a belief as to the truth of the allegation contained therein, and on that basis
20 denies each and every allegation therein.

21 25. Answering paragraph 25 of the Complaint, defendant is without knowledge or
22 information to form a belief as to the truth of the allegation contained therein, and on that basis
23 denies each and every allegation therein.

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SECOND CLAIM**Violations by AMEX, Discover, Asset Acceptance, Pinnacle & National Credit****Of 15 USC §1681s-2(b)**

26. Answering paragraph 26 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

27. Answering paragraph 27 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

28. Answering paragraph 28 of the complaint, deny as to PINNACLE. As to the remaining allegations, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies the remainder of each and every allegation therein.

29. Answering paragraph 29 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

30. Answering paragraph 30 of the complaint, deny as to PINNACLE. As to the remaining allegations, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies the remainder of each and every allegation therein.

31. Answering paragraph 31 of the complaint, deny as to PINNACLE. As to the remaining allegations, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies the remainder of each and every allegation therein.

32. Answering paragraph 32 of the complaint, deny as to PINNACLE. As to the remaining allegations, defendant is without knowledge or information to form a belief as to the truth

1 of the allegation contained therein, and on that basis denies the remainder of each and every
2 allegation therein.

3 33. Answering paragraph 33 of the complaint, deny as to PINNACLE. As to the
4 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
5 of the allegation contained therein, and on that basis denies the remainder of each and every
6 allegation therein.

7 34. Answering paragraph 34 of the complaint, deny as to PINNACLE. As to the
8 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
9 of the allegation contained therein, and on that basis denies the remainder of each and every
10 allegation therein.

11 35. Answering paragraph 35 of the complaint, deny as to PINNACLE. As to the
12 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
13 of the allegation contained therein, and on that basis denies the remainder of each and every
14 allegation therein.

15
16 **THIRD CLAIM**

17 **Violations by Asset Acceptance, Pinnacle & National Credit**

18 **of 15 USC §1692 *se seq.***

19 36. Answering paragraph 36 of the Complaint, defendant is without knowledge or
20 information to form a belief as to the truth of the allegation contained therein, and on that basis
21 denies each and every allegation therein.

22 37. Answering paragraph 37 of the complaint, PINNACLE denies that it is in the
23 business of collecting debt in the State of California. Defendant is without knowledge or
24 information to form a belief as to the truth of the remaining allegations contained therein, and on
25 that basis denies each and every allegation therein.

26 38. Answering paragraph 38 of the complaint, PINNACLE denies that it is a debt
27 collector. Defendant is without knowledge or information to form a belief as to the truth of the
28

1 remaining allegations contained therein, and on that basis denies each and every allegation therein.

2 39. Answering paragraph 39 of the Complaint, defendant is without knowledge or
3 information to form a belief as to the truth of the allegation contained therein, and on that basis
4 denies each and every allegation therein.

5 40. Answering paragraph 40 of the complaint, deny as to PINNACLE. As to the
6 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
7 of the allegation contained therein, and on that basis denies the remainder of each and every
8 allegation therein.

9 41. Answering paragraph 41 of the complaint, deny as to PINNACLE. As to the
10 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
11 of the allegation contained therein, and on that basis denies the remainder of each and every
12 allegation therein.

13 42. Answering paragraph 42 of the complaint, deny as to PINNACLE. As to the
14 remaining allegations, defendant is without knowledge or information to form a belief as to the truth
15 of the allegation contained therein, and on that basis denies the remainder of each and every
16 allegation therein.

17
18 **FOURTH CLAIM**

19 **Asset Acceptance's Violation of the California's Identity Theft Statute,**

20 **California Civil Code §§1789.92 *et seq.***

21 43. Answering paragraph 43 of the Complaint, defendant is without knowledge or
22 information to form a belief as to the truth of the allegation contained therein, and on that basis
23 denies each and every allegation therein.

24 44. Answering paragraph 44 of the Complaint, defendant is without knowledge or
25 information to form a belief as to the truth of the allegation contained therein, and on that basis
26 denies each and every allegation therein.

27 45. Answering paragraph 45 of the Complaint, defendant is without knowledge or
28

1 information to form a belief as to the truth of the allegation contained therein, and on that basis
2 denies each and every allegation therein.

3 46. Answering paragraph 46 of the Complaint, defendant is without knowledge or
4 information to form a belief as to the truth of the allegation contained therein, and on that basis
5 denies each and every allegation therein.

6 47. Answering paragraph 47 of the Complaint, defendant is without knowledge or
7 information to form a belief as to the truth of the allegation contained therein, and on that basis
8 denies each and every allegation therein.

9 48. Answering paragraph 48 of the Complaint, defendant is without knowledge or
10 information to form a belief as to the truth of the allegation contained therein, and on that basis
11 denies each and every allegation therein.

12
13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State Cause of Action)**

15 The complaint and each cause of action contained therein fails to state facts
16 sufficient to constitute causes of action as to this answering defendant.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 The complaint and each cause of action contained therein is barred by the applicable
20 statute of limitations.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Failure to Mitigate)**

23 At all times material herein, plaintiff failed and neglected to mitigate his damages, so
24 as to reduce and/or diminish his claim.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Laches)**

27 This answering defendant is informed and believes and on such basis alleges that
28

1 plaintiff is guilty of laches and that each and every cause of action within the complaint should fail
2 because plaintiff has inexcusably and unreasonably delayed the commencement of his action against
3 this defendant and is estopped from asserting his actions as a result thereof.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Estoppel)**

6 This answering defendant is informed and believes that the complaint and each and
7 every cause of action contained therein fails because of this answering defendant's reasonable
8 reliance on the acts or omissions of plaintiff, whereby the plaintiff is now estopped from asserting
9 the claims in his complaint against this answering defendant.
10

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 Plaintiff's claims against this answering defendant are expressly barred as a result of
14 plaintiff's unclean hands.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Comparative Fault of Third Parties)**

17 If plaintiff suffered or sustained any damage or injury, either as alleged in the
18 complaint, or at all, the same was directly and proximately contributed to by the negligence,
19 recklessness, carelessness, fault, and unlawful conduct of other parties or entities, whether or not
20 parties to this action, and damages of plaintiff, if any, shall be reduced in proportion to the amount
21 of negligence and/or fault attributable to such other persons or entities, whether or not parties to this
22 action.
23

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Comparative Fault)**

26 If plaintiff suffered or sustained any damage or injury, either as alleged in the
27 complaint or at all, the same was directly and proximately contributed to by the negligence,
28 recklessness, carelessness, fault and unlawful conduct of plaintiff, and damages of plaintiff, if any,

1 shall be reduced in proportion to the amount of negligence and/or fault attributable to plaintiff.

2 **NINTH AFFIRMATIVE DEFENSE**

3 Any violations of law, if any occurred, resulted from a bona fide error despite the
4 maintenance of procedures reasonably adopted to avoid any such error.

5 WHEREFORE, this answering defendant prays for judgment as follows:

- 6 1. Plaintiff take nothing by reason of the complaint;
7
8 2. This answering defendant be dismissed with prejudice;
9
10 3. For costs of suit incurred herein;
11 4. For reasonable attorney's fees incurred herein; and
12 5. For such other relief as the Court deems just and proper.

13 Dated: June 6, 2008

LAW OFFICES OF TIMOTHY P. JOHNSON

14 By: /S/ Timothy P. Johnson
15 TIMOTHY P. JOHNSON
16 Attorneys for Defendant PINNACLE CREDIT
SERVICES, LLC

17 Tpj:cww/Williams/pleadings/002

PROOF OF SERVICE BY MAIL

C.C.P. §1013(a), C.R.C. 2003(3), 2005(I)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 17821 E. 17th Street, Suite 290, Tustin, California 92780.

On June 6, 2008, I served the foregoing document described as **ANSWER OF DEFENDANT PINNACLE CREDIT SERVICES, LLC TO COMPLAINT** on all interested parties in this action by:

☒ placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on the same day with postage thereon fully prepaid at Tustin, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressee.

☐ **BY FACSIMILE TRANSMISSION:** From Fax No. (714) 832-1179 to the facsimile numbers listed on the attached mailing list. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine.

☐ **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

EXECUTED on June 6, 2008 at Tustin, California.

/S/ Carol W. Wiese
CAROL W. WIESE

Williams v. Trans Union, et al.
USDC, Case No. C-07-5956 CRB

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